

VZCZCXYZ0002
OO RUEHWEB

DE RUEHNR #3437/01 2200856
ZNR UUUUU ZZH
O 080856Z AUG 06
FM AMEMBASSY NAIROBI
TO RUEHC/SECSTATE WASHDC IMMEDIATE 3564
INFO RUEHDS/AMEMBASSY ADDIS ABABA PRIORITY 8703
RUEHDR/AMEMBASSY DAR ES SALAAM PRIORITY 4784
RUEHDJ/AMEMBASSY DJIBOUTI PRIORITY 4310
RUEHKM/AMEMBASSY KAMPALA PRIORITY 1492
RUEHLO/AMEMBASSY LONDON PRIORITY 1977
RUEHFR/AMEMBASSY PARIS PRIORITY 1958
RHMFISS/CJTF HOA PRIORITY
RHMFIUU/CDR USCENTCOM MACDILL AFB FL PRIORITY

UNCLAS NAIROBI 003437

SIPDIS

SIPDIS

E.O. 12958: N/A
TAGS: [KDEM PHUM PREL EAID SOCI KE](#)
SUBJECT: KENYA CRIMINALIZES SEXUAL (AND SOME TRAFFICKING)
OFFENSES

REF: NAIROBI 1819

¶1. (U) SUMMARY: On May 31, Kenya's National Assembly voted to criminalize the worst forms of sexual offenses, including rape, defilement, child pornography and sex tourism, and sexual harassment. While amendments to the bill may have watered down some of the proposed protections, the passage of the bill with most of the significant provisions intact is a major step forward in establishing a legal framework for protection from sexual violence. The bill's passage lays an excellent foundation for the proposed WJEI program in Kenya, enabling it to build upon the heightened awareness of sexual offenses and the new tools available to legal and law enforcement authorities to protect victims and punish perpetrators. END SUMMARY.

One Woman's Quest to Tackle Sexual Violence

¶2. (U) Disturbing sexual violence statistics for Kenya amply demonstrate the urgent need for a comprehensive law defining, criminalizing, consolidating, and enhancing penalties for sexual offenses. An estimated 16,482 rapes occur annually, according to statistics from Women in Law and Development in Africa, a pan-African NGO promoting a culture for the exercise of and respects for women's rights in Africa. This translates into an incidence of rape occurring every thirty minutes.

¶3. (SBU) The bill is the personal project of nominated member of parliament Njoki Ndungu. Aware that some MPs would insist on amendments to address the more contentious provisions of the bill, Ndungu told polFSN that she deliberately included "overreaching" provisions. These provisions drew the attention of her male counterparts, leaving most of the core provisions intact. Ndungu explained that she was pleased with the final version of the bill and stated that the amendments did not significantly affect the spirit or the most important provisions of the bill. It is noteworthy that such a bill emanated from a private member rather than from within government. As a private member's initiative, the bill avoided much of the delays inherent in a government project which would have ensued from various government ministries (and personalities) debating contentious provisions and also avoided incurring the automatic resistance of the opposition to a government project. To better spread her message and make information available to the general public, Ndungu created a website, www.sexualoffencesbill.co.ke, containing information about the history and provisions of the bill and statistics for

sexual violence in Kenya.

Popular Pressure Influenced Vote

¶4. (U) The debate on the bill in Parliament was heated and split sharply along gender lines. While the elite male MPs debated their perception that the word "No" expresses a range of meanings in Kenyan culture, hundreds of protesters descended on Parliament to express their support for the bill. In a show of rare solidarity, at one point during the debate the female MPs stormed out of Parliament united to express their disapproval of the proposed amendments. Subsequent conversations with MPs reveal that significant popular pressure was applied to them to support the bill. In short, the passage of the bill became an election issue for many MPs. As a result of this popular pressure, a number of prominent MPs reversed their resistance to certain provisions, allowing for the relatively swift passage of the bill. The influence of the power of the people in ensuring that this bill was adopted is an important development in Kenya's young democracy. It is among the first instances of popular pressure directly affecting the adoption of legislation. USAID funded advocacy efforts and education for MPs on the provisions of the bill.

Some Watering Down

¶5. (U) However, some significant amendments to the bill were made, which may have serious consequences for rape victims. In particular, one of the amendments shifts the burden of proof to the claimant to establish the guilt of the accused. Another amendment imposes penalties equal to the offense

charged (imprisonment for not less than 10 years) for providing false information about an incidence of rape. These two provisions may have a significant chilling effect on the willingness of rape victims to come forward and seek justice. Additionally, the MPs voted to strike the provision criminalizing marital rape, arguing that non-consensual intercourse could not occur between spouses.

Trafficking in Persons Now Criminalized

¶6. (U) The law also provides for the much needed criminalization of trafficking of children and trafficking in persons for the purpose of sexual exploitation. The law defines an act of child trafficking as one where a person: "knowingly or intentionally makes or organizes any travel arrangements for or on the behalf of a child within or outside the borders of Kenya, with the intention of facilitating the commission of any sexual offense against a child, irrespective of whether the offense is committed" and also one who "supplies, recruits, transports, transfers, harbors or receives a child within or across the borders of Kenya, for the purposes of the commission of any sexual offense under this act with such child or any other person."

¶7. (U) Trafficking for sexual exploitation is defined as any person who "intentionally or knowingly arranges or facilitates travel within or across the borders of Kenya by another person and either: intends to do anything to or in respect of the person during or after the journey in any part of the world, which if done will involve the commission of an offense under this act; or believes that another person is likely to do something to or in respect of the other person during or after the journey in any part of the world, which if done will involve the commission of an offense under this act."

¶8. (U) The law imposes a minimum sentence for child trafficking of imprisonment for ten years, and a fine of not less than approximately USD 27,400 for juristic persons. Those found guilty of trafficking for the purpose of sexual exploitation now will face a minimum term of imprisonment for 15 years and/or a fine of at least USD 27,400. While the

criminalization of human trafficking is a definite step forward in combating the vice, comprehensive anti-trafficking legislation is urgently needed to address various aspects of trafficking, including trafficking for exploitative labor. Such draft legislation is currently with the office of the Attorney General for refinement and gazetting, which would pave the way for Parliament to adopt.

What This Means For WJEI

19. (SBU) COMMENT: While the amendments to the bill undoubtedly dilute some of the protections afforded under the proposed bill, the new law (merely awaiting the President's signature to come into effect) empowers victims, their defenders, law enforcement, and the courts with the necessary tools to ensure that sexual offenses do not go unpunished. The adoption of the law has significant implications for the proposed WJEI program here in Kenya. (Reftel.) The extensive media coverage of the bill and parliamentary debates heightened awareness of sexual offenses and brought sensitive subjects like sexual mores, rape, and defilement out of the shadows and into the public sphere. The new provisions now arm law enforcement and legal officials with the authority and required tools to carryout community policing, investigations, and prosecutions. While significant cultural and legal hurdles still may discourage rape victims from seeking justice, the new law certainly affords them additional protections and incentives for ending the assured impunity which sexual offenders have previously enjoyed. END COMMENT.

HOOVER